111728

ORIGINAL

DEPT. OF TRANSPORTATION
DOCKETS
00 SEP 22 PM 4:18

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

In the matter of	)	**Dockets** OST-97-2881 – 138
	)	OST-97-3014 – 8
Computer Reservations System (CRS) Regulations	)	OST-98-4775 – 54

COMMENTS OF UNITED AIR LINES, INC.

Communications with respect to this document should be sent to:

SHELLEY A. LONGMUIR
Senior Vice President-
International, Regulatory and
Governmental Affairs

MICHAEL G. WHITAKER
Vice President-International
and Regulatory Affairs

STEPHEN P. SAWYER
Assistant General Counsel

JONATHAN MOSS
Director-Regulatory Affairs

UNITED AIR LINES, INC.
P.O. Box 66100, WHQIZ
Chicago, Illinois 60666

MARK ANDERSON
Senior Director-Government
Affairs

UNITED AIR LINES, INC.
1025 Connecticut Avenue, N.W.
Suite 1210
Washington, D.C. 20036

BRUCE H. RABINOVITZ
JEFFREY A. MANLEY
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6960 (Phone)
(202) 663-6363 (Fax)
brabinovitz@wilmer.com

Counsel for
UNITED AIR LINES, INC.

DATED: September 22, 2000

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

In the matter of	)	**Dockets OST-97-2881**
	)	**OST-97-3014**
Computer Reservations System	)	**OST-98-4775**
(CRS) Regulations	)	
	)	

COMMENTS OF UNITED AIR LINES, INC.

United Air Lines, Inc. ("United") files these Comments in response to the Department's Supplemental Advanced Notice of Proposed Rulemaking ("Supplemental ANPRM") seeking comment on two issues: (i) "the advisability of regulating airline distribution practices involving the Internet"; and (ii) "the effect of the reduced ties between CRS systems and the airlines that have controlled them." 65 Fed. Reg. at 45556.[1]

I. Introduction

Over the past ten years, no subject considered by the Department has generated more comment and controversy than its

---

[1] United has already filed five pleadings in this consolidated proceeding, demonstrating that extension of the CRS regulations is not only unnecessary but flatly inconsistent with the public interest. Those pleadings detail at some length how the CRS regulations -- and, in particular, Sections 255.6(a) (requiring systems to charge all carriers the same fees) and 255.7 (requiring system owners to participate in all other systems) -- no longer have any economic justification (if they ever did) and have resulted in enormous inefficiencies and costs to consumers. United here reaffirms, but will not repeat, these arguments. Rather, it will limit itself to the two specific issues raised by the Supplemental ANPRM.

regulation of CRS services. United expects the Department's latest Supplemental ANPRM will prove no exception. Nonetheless, as the Supplemental ANPRM suggests, the Department is at a key cross roads in its regulation of airline distribution practices. The decisions the Department makes in this proceeding will inevitably shape the course of the air travel industry for years to come. The broad options available to the Department are clear: it can turn away from intrusive regulation of airline distribution practices and allow competitive market forces to determine the future of those practices, or it can extend the dead hand of regulation to the Internet, becoming the first government agency to do so. The CRS rules already represent a unique governmental intrusion into an industry's distribution of its service to consumers. It would be unfortunate indeed if the airline industry were now to become the only industry whose use of the Internet is directly regulated by the federal government.

The Internet is the most significant development to occur in the distribution of goods and services in decades. Although still evolving, the Internet is already revolutionizing the distribution of air travel products. It is creating entirely new ways of selling air travel from reverse auctions on

Priceline.com to new business-to-business purchasing models being developed by GetThere.com. The Internet is making it possible for consumers to obtain a virtually unlimited amount of price, service and other product information at very low cost, spurring creative new marketing practices. It has triggered lower prices, reduced distribution costs, increased the opportunities available to new entrant carriers to utilize lower-cost distribution alternatives, and offered the traveling public unprecedented control over the purchase of air transportation products.

Subjecting this medium, with its potential for enormous consumer benefits, to *any* regulation should be done only with extreme caution. As the Administration recently warned: "For [the Internet's] potential to be realized fully, governments must adopt a non-regulatory, market-oriented approach to electronic commerce."[2] Subjecting it to regulations as competition- and innovation-stifling as the CRS regulations would be a disaster.

---

[2] The White House, A Framework for Global Electronic Commerce, July 1, 1997 (located at <http:// www.ecommerce. gov/framewrk.htm>) at 3.

The history of U.S. CRS regulation is a paradigm of why not to regulate the distribution of air transportation over the Internet. Whatever the rational for adopting such regulations nearly twenty years ago, the regulations have become a costly anachronism, imposing ever higher costs on the industry, and limiting carriers' ability to distribute their services cost effectively through retail travel agents. While airlines have been permitted -- indeed, required -- to compete on every other possible basis (e.g., price, frequencies, service options, etc.), the CRS regulations have largely insulated CRS vendors from competitive market forces. Through the regulatory prohibition of price competition (Section 255.6(a)) and requirement of system owner participation in all systems (Section 255.7), CRS vendors have effectively been able to avoid having to compete with each other over the terms they offer for system participation.

The results have been predictable. While carriers and suppliers have competed fiercely on every other competitive metric -- resulting in lower costs, lower prices and greater travel options -- the cost of CRS services utilized by travel agents has skyrocketed, and carriers' ability to limit the cost

of distributing their services through retail travel agents has been frustrated. Further, with the vendors insulated from competitive pressures, the CRS industry has produced less innovation in retail distribution alternatives over the past twenty years than the competitive free-for-all of the Internet has produced in the last two.

Extending CRS-type regulation to the Internet -- which would, however applied, limit the freedom of online distributors to conclude commercial arrangements and deliver services as they see fit -- would have the same results. It would pervert (if not eliminate altogether) competition and discourage creativity. Further, by singling out the distribution of air transportation over the Internet as a "specially regulated" corner of electronic commerce, it risks deterring entry by those entrepreneurs who are likely to be the most competitive and creative.

Just as the Department has been presented with a diversity of opinions in this proceeding on whether the CRS regulations should be maintained at all, commenters will likely express a range of views on whether regulation of Internet distribution is

needed. Those whose parochial commercial interests depend on limiting the competition they face from this rapidly expanding industry will doubtless argue that, regardless of the risks to competition and innovation, regulation of the Internet is essential.

The argument is fallacious. There are ample consumer protection laws precluding deceptive practices (including Section 41712 of the Transportation Code). The need for CRS regulations overlaying those laws was based on special circumstances -- i.e., CRS systems were believed to constitute an "essential facility," which was under the control of individual carriers that had both an economic incentive and the ability to utilize such control to distort airline competition. Whatever the merits of that argument with respect to CRS systems as constituted in 1984, comparable special circumstances clearly do not exist in online distribution.

Online distribution products do not constitute an "essential facility"; nor are the vast majority of such products owned or controlled to any significant extent by individual carriers. Rather, they serve the same end distributor/retailer

function historically served primarily by retail travel agents, and are largely independent of carrier ownership and control, just as retail travel agents have historically been free of carrier ownership and control.[3] Just as the Department does not subject travel agencies' use of CRS networks to sell air transportation to regulation, or otherwise regulate agents' commercial arrangements with their customers or with airlines or other travel product suppliers, there simply is no basis to subject online distribution products to pervasive CRS-type regulation, or to regulate airlines' and other suppliers' commercial dealings with online distributors.

Accordingly, United strongly urges the Department to resist calls to impose CRS-type regulation on internet-based

---

[3] In large measure, so-called "bricks and mortar" travel agents have been concerned about airlines' increasing reliance on the Internet because consumers use the Internet to obtain information about available fares and service alternatives and to purchase tickets, services that were historically the almost exclusive preserve of retail travel agents. Although travel agents have tended to support regulation of online distribution services, they strenuously oppose direct DOT regulation of their own business practices such as the disclosure of override agreements with carriers or other travel suppliers. United does not support the regulation of retail travel agents' business practices. United remains confident that competitive market forces are sufficient to ensure that the vast majority of travel agents will work hard to serve their customers' travel needs in a fair and unbiased manner. United is equally confident, however, that competitive market forces will also ensure that vendors of online distribution services will work hard to serve their customers' needs in a fair and unbiased manner. For that reason, United strenuously opposes the imposition of regulation on online distribution services that is not applied equally and uniformly to retail travel agents and others in direct competition with the suppliers of online distribution services.

distribution services. United also reiterates its position that the continued trend towards separation of CRS systems from their carrier founders evidenced in the past three years compels the conclusion that the CRS regulations (and, in particular, Sections 255.6(a) and 255.7) are no longer needed and should not be extended.[4]

II. There is No Rationale for Regulating Distribution of Air Transportation over the Internet, and Doing So Would Contravene Other Federal Policies With Respect to Regulation of Air Transportation and the Internet

There is simply no defensible economic rationale for extending CRS-type regulation to distribution services offered over the Internet. It is important to recall the economic rationale for the CRS regulations when they were first enacted by the Civil Aeronautics Board in 1984: CRS systems were believed to constitute an essential facility owned and controlled by individual carriers, affording the systems' owners both an economic incentive and the ability to utilize such control to distort airline competition. With respect to

---

[4] See Supplemental Comments of United Air Lines, Inc. (dated October 7, 1999); Supplemental Reply Comments of United Air Lines, Inc. (dated March 8, 2000).

Internet distribution of air transportation products,[5] no entity functions as an essential facility[6] -- i.e., there is no single or small group of sites to which consumers must gain access in order to purchase air transportation online. To the contrary, there are scores of sites -- ranging from the carriers' own proprietary web sites, to those of "bricks and mortar" travel agents, to those of online sellers of air travel -- all of which are capable of furnishing detailed information about carriers' fares, schedules, and seat availability and affording

---

[5] There remains, moreover, a strong argument that distribution through the Internet is not a discrete market in any event. Distribution of travel products through more traditional means (e.g., through "bricks and mortar" travel agencies, airline call centers, ticket offices, etc.) remain viable substitutes for Internet distribution. As a result, in the highly unlikely event that one web site did emerge as consumers' predominant choice for purchasing travel online, such site would hardly constitute an "essential facility" for purchasing air travel because consumers would still be free to utilize alternative distribution channels. This contrasts sharply with the situation in 1984, when the Board found that travel agents were the predominant distribution channel for the sale of air transportation and that individual agents were dependent on a single CRS network, owned by a single carrier that had both the means and an incentive to use such control to distort competition in the air travel market. Individuals, by comparison, are not wholly dependent on the Internet to obtain information about or to purchase air travel and the Internet, though growing rapidly, continues to be used by a relatively small number of consumers to make air travel purchases. In short, none of the key factors that lead the Board to characterize an individual CRS network as an essential facility applies to Internet distribution, even assuming one web site were to become consumers' predominant online distribution choice.

[6] To the extent that there are any "essential facilities" associated with the Internet, they are in Internet *access* (e.g., provision of backbone or control over operating systems), rather than Internet *content*. Whether entities furnishing such access (e.g., large telecommunications companies, manufacturers of operating systems, etc.) should be subject to special regulation is clearly beyond the scope of this proceeding and beyond the Department's jurisdiction in any event.

prospective travelers the opportunity to purchase a ticket electronically.

Further, no single carrier or small group of carriers controls consumers' access to the Internet. There is, accordingly, no reason to believe that the information available to consumers on the Internet will be biased in favor of a particular carrier. To the contrary, with so many competing web sites available, if any individual web site, whether publicly owned, privately owned, owned by one or more airlines, or independent, provides information in a manner that is too incomplete, too difficult to use, or biased in favor of one or more airlines, other more comprehensive, easier to use, or unbiased sites are never more than a mouseclick away.

As a result, even if some sites do favor the services of one or more carriers, there is no reason to believe that this poses any threat to competition, so long as consumers are not misled as to the manner in which information is being displayed.[7]

---

[7] Clearly no special regulation is necessary to address this possibility. In cases where deception is found to exist, it may be addressed by the Department, other federal authorities (e.g., the Federal Trade Commission) and state authorities under existing statutory powers, including through individual enforcement actions pursuant to Section 41712. Broadscale

Customers seeking "biased" information (e.g., customers who prefer to purchase from a specific carrier) should have that option available to them. Other customers seeking comprehensive information can always move from one site to another with a single mouseclick.

The developments of the past three years amply demonstrate that no single site functions as an essential facility and that competition is flourishing in online distribution. Scores of distribution channels have been created and the sale of tickets over the Internet, although still relatively limited in total, has grown rapidly. Carriers have no ownership or control over the vast majority of these sites. Rather, the vigorous competition among those sites has led them to extend their databases to include more travel options and to develop new, innovative ways for consumers to purchase low cost air travel products online.[8]

---

proscriptive regulations comparable to Part 255 are certainly not essential to protect the public from deceptive business practices.

[8] Bear Stearns, "Point, Click, Trip" (April 2000) at 41-42.

The extension of any form of regulation to Internet distribution channels is accordingly both unnecessary and unwise. It is also plainly inconsistent with (1) deregulation of the airline industry and (2) the U.S. Government's conscious policy of refraining from Internet regulation.

In deregulating the U.S. aviation industry more than twenty years ago, it was Congress' intent that the government disengage itself from supervising the carriers' competitive activities in as many spheres as possible. The theory of airline deregulation was that vigorous competition in all those spheres would ultimately maximize consumer welfare. The Department has largely heeded this dictate. It has not attempted to regulate most of the carriers' competitive actions, such as deciding what to fly, where to fly, and what prices to charge.[9] Its regulation

---

[9] As the Department has repeatedly acknowledged, the results of this competitive free-for-all have been overwhelmingly positive; as carriers have competed on bases and in ways previously unknown, consumers have available to them more transportation options at lower prices than ever before. See, e.g., U.S. Department of Transportation, Secretary Slater Pursues Dialogue on Airline Service (located at <http://www.dot.gov/affairs/1999/dot1899.htm> ("[a]irline deregulation, which began 20 years ago, has had a tremendous success in lowering average fares"); U.S. Department of Transportation, Remarks Prepared for Delivery, Secretary of Transportation Rodney E. Slater, Airline Deregulation and Competition Forum, October 23, 1998 (located at <http://www.dot.gov/affairs/1998/102398sp.htm> (stating "[d]eregulation, and the competition it has spurred, has been good both for consumers and for airlines").

of carriers' relationships with CRS vendors constitutes a significant exception to this practice. While carriers are able to purchase all other inputs from suppliers at whatever prices and under whatever terms they are able to negotiate, their freedom to negotiate the terms upon which they will participate in CRS networks is substantially circumscribed; the regulations have reduced them to price-takers. The resulting costs to carriers -- passed on to consumers -- have been significant: while the market for air transportation has witnessed enormous innovation and a sharp fall in prices over the past twenty years, distribution through CRS systems has become more expensive, as the CRS industry has consolidated despite the high returns on investment reported by the four remaining vendors. Equally important, while there has been substantial new investment and technological and business innovation in developing new online distribution products, the CRS distribution model remains virtually unchanged from that in use prior to deregulation.

Extending CRS-type regulation to the Internet would doubtless have the same effect. Indeed, the effect of regulating Internet-based distribution might well be even more

pernicious. This is because the potential gains to consumer welfare from the competition taking place among Internet distribution providers -- an industry with far lower entry costs than the CRS industry, which has already demonstrated significant consumer gains from innovation and lower costs -- promise to be even greater than those achieved over the past 20 years from the automation of the booking and ticketing process through CRS networks. Such a step backward would be wholly incompatible with airline deregulation, which was adopted in significant part to enable air transportation to benefit from new, competition-enhancing technologies.

Applying CRS-type regulation to Internet distribution is also flatly inconsistent with the federal government's policy of refraining from regulating commerce over the Internet.[10] This policy has been repeatedly reaffirmed and advocated by the U.S. Government to its trading partners globally. In July 1997, the White House issued "A Framework for Global Electronic Commerce,"

---

[10] The Department notes in the Supplemental ANPRM that, as a practical matter, it might choose to direct its regulations to the *carriers* rather than the Internet sites themselves. This is a distinction without a difference. However instituted, the regulation of relationships between carriers and entities selling transportation products over the Internet would constitute a regulation of electronic commerce, limiting the commercial freedom of such entities.

a statement of the Government's "strategy for fostering increasing business and consumer confidence in the use of electronic networks for commerce."[11] The Framework is based on the key principle that "Governments should avoid undue restrictions on electronic commerce."[12] In particular, it notes that:

- Parties should be able to enter into legitimate agreements to buy and sell products and services across the Internet with minimal government involvement or intervention. Unnecessary regulation of commercial activities will distort development of the electronic marketplace by decreasing the supply and raising the cost of products and services for consumers the world over. Business models must evolve rapidly to keep pace with the break-neck speed of change in the technology; government attempts to regulate are likely to be outmoded by the time they are finally enacted, especially to the extent such regulations are technology-specific.

  Accordingly, governments should refrain from imposing new and unnecessary regulations, bureaucratic procedures, or taxes and tariffs on commercial activities that take place via the Internet.[13]

---

[11] The White House, A Framework for Global Electronic Commerce, July 1, 1997 (located at <http:// www.ecommerce. gov/framewrk.htm>) [hereinafter "Framework"]. See also Federal Communications Commission, The FCC and the Unregulation of the Internet, OPP Working Paper No. 31, dated July 1999 (concluding the FCC's non-regulation of the Internet was a crucial factor in the successful growth of the Internet and arguing for continued non-regulation in the future); Department of Commerce, The Emerging Digital Economy, April 1998 (located at <http://www.ecommerce.gov/emerging.htm>) at 50 (arguing that intrusive government regulation could substantially impede progress in electronic commerce).

[12] Framework at 3.

[13] Id. at 3-4.

- For electronic commerce to flourish, the private sector must continue to lead. Innovation, expanded services, broader participation, and lower prices will arise in a market-driven arena, not in an environment that operates as a regulated industry.[14]

- Commerce on the Internet could total tens of billions of dollars by the turn of the century. For this potential to be realized fully, governments must adopt a non-regulatory, market-oriented approach to electronic commerce, one that facilitates the emergence of a transparent and predictable legal environment to support global business and commerce.[15]

Any extension of CRS-type regulation to the Internet would be flatly inconsistent with the policy laid out in the Framework (and repeatedly reaffirmed thereafter by both this Administration and Republican leaders in the U.S. Congress).[16] Such regulations would constitute a substantial governmental intrusion into the provision of content and commerce on the Internet. They would, moreover, invite similar efforts by other governments, contrary to the Administration's consistent effort to avoid such regulation. The end result would be, as the Framework warns, "distort[ed] development of the electronic

---

[14] Id. at 3.

[15] Id. at 2.

[16] See, e.g. San Francisco Chronicle, "House Oks Clinton Plan to Ban Internet Taxes" (Oct. 27, 1999) at A1 (Democrats and Republicans unanimous in support of Administration's policy of forgoing regulation of electronic commerce).

marketplace . . . decreasing the supply and raising the cost of products and services for consumers the world over."[17]

II. There is no Factual or Legal Basis for Continuing the CRS Regulations Given the Separation between CRS Systems and the Carriers

As noted above, airline control of CRS systems was the fundamental predicate for the CRS regulations; absent such control, there would have been no reason to implement them and there is no reason to maintain them.

The theory underlying the regulations since 1984, was that CRS systems function as an essential facility for the distribution of air transportation products and that carrier control of that essential facility poses dangers to competition sufficient to merit special regulation (i.e., the CRS regulations). Whatever the merits of that theory, it was clearly premised on the factual assumption that carriers did, in fact, control the systems. That assumption was made explicit in

---

[17] Framework at 3.

the original CAB rulemaking,[18] the decision of the Seventh Circuit Court of Appeals affirming the rules,[19] and the CRS regulations themselves (whose application is explicitly limited to systems that are owned, controlled, operated or marketed by air carriers or foreign air carriers).[20]

Obversely, it follows that if CRS systems should ever cease to be controlled by carriers, the CRS regulations would no

---

[18] 49 Fed. Reg. 32540, 32542 (premising the regulation's basis and purpose on the finding that CRS carrier owners "are competitors in the downstream air transportation industry"). See also 57 Fed. Reg. 43794 (Department explicitly references carrier control over CRS systems as basis for limiting CRS regulations to airline-affiliated CRS systems).

[19] United Air Lines v. CAB, 766 F.2d 1107, 1114(1985).

[20] See 14 CFR §255.2. The first three bases for regulation -- ownership, control or operation -- are all clearly intended to limit the application of Part 255 to systems "controlled" by airlines. Although if §255.2 is read literally, the Part also applies to a system "marketed" by an airline, either separately or in combination with others, that is publicly owned, the Department has never considered whether the rule is intended to be read that broadly. Nor has the Department ever sought to explain why regulation of such a system would be needed, or on what basis it would have jurisdiction over the operation of such a publicly-owned system, given the limited scope of its jurisdiction under §41712 of the Transportation Code. Nor have the advocates of continued CRS regulation explained how an airline's agreement to market an independently-owned and controlled CRS would give the airline marketer control over the system's display algorithms or business practices, or why an independent vendor would operate its system in a manner intended to benefit a single carrier, even if the carrier was involved in marketing the system. The proponents of regulation have also failed to come to grips with the core principle of the Second Circuit's decision in Official Airline Guides, Inc. v. FTC, 630 F.2d 920 (2nd Cir. 1980), discussed in the ANPRM at 45554, which clearly limits not only the FTC's section 5 jurisdiction but also the Department's jurisdiction under §41712 to regulate the business practices of CRS vendors (or online travel vendors) that are not owned or controlled by air carriers. See Comments of United Airlines (December 12, 1997) at n.9.

longer be needed. Even assuming CRS networks do function as essential facilities, which United disputes,[21] CRS systems not owned and controlled exclusively by carriers would have no inherent incentive to bias in favor of any carrier. Rather, they would function as normal profit-maximizing entities whose aim surely will be to supply services in whatever fashion best serves their travel agent customers' needs. There would be no more reason to regulate the relationships between carriers and CRS vendors than those between carriers and the many suppliers of other goods and services (e.g., aircraft manufacturers, fuel suppliers, labor, etc.) relied upon by airlines to provide air

---

[21] Although not the focus of the Supplemental ANPRM, developments of the past few years also raise doubt about whether, even assuming the systems were essential facilities in 1984, which United strenuously disputes, they remain so today. Developments such as cheap and easy access to PCs, phone lines, the Internet and proprietary carrier web sites make CRS systems far less critical to the distribution of air transportation. This is confirmed by the fact the Southwest Airlines, the most profitable domestic carrier based on its operating margin, participates in only one system, and does not permit its tickets to be sold by any system, thereby avoiding entirely the need to pay booking fees. Southwest's distribution practices are now being followed by other low-fare specialists both here and in Europe. While Southwest is free under Part 255 to pursue this distribution strategy, United is not solely because United continues to own approximately 17% of Galileo International's outstanding shares, an equity investment that gives United no control over Galileo's business practices. The result is that the Department is effectively imposing substantial distribution costs on United which Southwest is able to avoid, even though Southwest is one of United's principal domestic competitors. These higher distribution costs limit United's ability to match Southwest's fares, effectively denying United, through government dictate, a fair opportunity to compete with Southwest and contributing to the cost pressures on United to charge consumers higher fares for its service.

transportation -- relationships which the Department has never proposed to regulate.[22]

It is precisely this development that has occurred over the past three years: carriers have largely divested the interests they once held in the CRS systems. Today, of the four major CRS systems operating in the United States, only one (Worldspan) remains wholly owned by carriers. The other three are either wholly owned by the public (SABRE), or have significant public

---

[22] Some have advanced the argument that, even without direct carrier control over CRS systems through ownership interests and/or corporate governance rights, CRS regulations are necessary to prevent a carrier from gaining control over a CRS network contractually -- i.e., through exclusive arrangements to bias displays in favor of the contracting carrier. This far-fetched argument is both factually and legally unavailing. For several reasons, it is highly improbable that a carrier could gain such control or, even if it did, use such control to monopolize the market for air transportation. First, it is highly unlikely that a vendor would agree to such an arrangement; certainly there is no reason to believe that suppliers of CRS services are more likely to enter into such exclusive arrangements than independent suppliers of other essential products (e.g., aircraft, fuel) who have not done so. Second, it is highly unlikely that carriers would seek such contractual relationships; why would carriers be divesting their ownership interest in systems only to turn around and purchase the control of the same system through costly contractual relationships? Third, even if one system did agree to such an exclusive arrangement, it is highly unlikely that *all* the CRS systems would enter into similar agreements with the same carrier. Fourth, even if a carrier did somehow manage to gain control over a CRS, the normal operation of the antitrust laws would preclude any carrier from using that facility to monopolize the market for air transportation.

But even assuming *arguendo* the danger of contractual control was somehow sufficient to merit continuing special regulations, it clearly does not merit continuation of the intrusive CRS regulations in their entirety (and, in particular, Sections 255.6(a) or 255.7). Rather, the remote possibility of single-carrier control could be resolved simply by enacting a regulation precluding any carrier from entering into exclusive bias arrangements with all available CRS systems.

ownership interests (40 percent and 75 percent of the shares of Amadeus and Galileo (the parent company of Apollo), respectively, are publicly owned) that, as a matter of corporate law, preclude them from being operated for the benefit of the carrier shareholders. None of these entities is directly or indirectly under the control of, or being managed for the benefit of, the carriers who maintain investments in them.[23]

With the ownership and control link between carriers and most of the entities constituting what the regulations presume are an "essential facility" severed, there is simply no defensible economic rationale for continuing to regulate CRS systems or their relationships with carriers. Perpetuating such regulations, including in particular the prohibition on price competition and the requirement of owner participation in other systems, serves only to insulate the CRS vendors from competition and to discourage new outside investment in the industry and the technological innovation such investment would stimulate.

---

[23] See, e.g., Comments of United Airlines (October 7, 1999) at 5-6, 11-13; Supplemental Reply Comments of United Airlines (March 8, 2000) at 9.

Indeed, there is a strong argument that, absent the ownership and control link, DOT lacks authority under Section 41712 to maintain key parts of the CRS regulations (such as the requirements of Sections 255.6(a) and 255.7). Noting that these portions of the CRS regulations "rest entirely on the [Civil Aeronautics] Board's antitrust analysis," the Seventh Circuit Court of Appeals declined to overturn them in 1985 because, it found, CRS systems then constituted an essential facility over which carriers in fact had control.[24] Absent such control, it is doubtful that any "antitrust analysis" could justify the extension of Section 41712 to govern carrier relationships with vendors.

IV. Conclusion

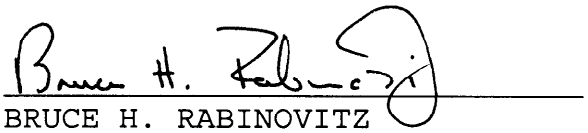
For the reasons set forth above and in the other pleadings it has filed in the above-captioned dockets, United urges the Department to decline to apply CRS-type regulation (or any variant of these regulations) to the market for distribution of

---

[24] United Air Lines v. CAB, 766 F.2d 1107, 1114 (1985)("[An airline] must, whether or not it has its own computerized reservation system, persuade several of the largest airlines to list its flights in their systems if it is to have a fair chance of competitive success. It thus is dependent for an essential facility on what may be its principal competitors. . . . Although none of the airline owners of computerized reservations systems has a conventional monopoly position in the market for that service, and they are not accused of colluding, the Board found that some of them, anyway, had substantial market power. This finding, if sustained, would bring their competitive practices within the broad reach of Section 411.")

air transportation products over the Internet; and to refrain from extending the term of the current CRS regulations (and, in particular, Sections 255.6(a) and 255.7).

Respectfully submitted,



BRUCE H. RABINOVITZ
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6960 (Phone)
(202) 663-6363 (Fax)
brabinovitz@wilmer.com

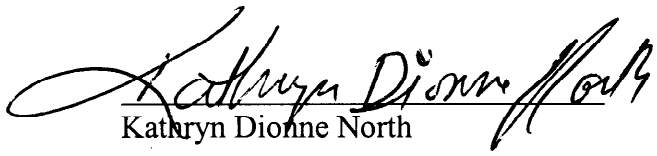
Counsel for
UNITED AIR LINES, INC.

DATED: September 22, 2000

K:\809875\1525\1603-Comments on Supp. ANPRM v.3.doc

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Comments of United Air Lines, Inc. on all persons listed on the attached Service List by causing a copy to be sent via first class mail, postage prepaid.



Kathryn Dionne North

DATE: September 22, 2000

David H. Coburn
Carol R. Gosain
Steptoe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

R. Bruce Keiner, Jr., Esq.
Crowell & Moring, LLP
1001 Pennsylvania Avenue, N.W.
Suite 1100
Washington, D.C. 20004-2595

Raymond J. Rasenberger, Esq.
Charles D. Simpson, Esq.
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006

Robert E. Cohn, Esq.
Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037

John E. Gillick
Winthrop, Stimson, Putnam & Roberts
1133 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20036

Carolyn F. Corwin, Esq.
David W. Addis, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

Arthur J. Molins, Esq.
General Counsel North America
Lufthansa German Airlines
1640 Hempstead Turnpike
East Meadows, N.Y. 11554

Charles Donley, II, Esq.
Marshall S. Sinick, Esq.
James V. Dick, Esq.
Squire, Sanders & Dempsey
1202 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Robert P. Silverberg, Esq.
Klein & Bagileo
1101 30th Street, N.W.
Suite 120
Washington, D.C. 20007

Andrew B. Steinburg, Esq.
Senior Vice President & General Counsel
The SABRE Group, Inc.
4333 Amon Carter Blvd., MD 5675
Fort Worth, TX 76155

Glen Wicks
The Wicks Group, PLLC
900 - 19th Street, N.W.
Suite 350
Washington, D.C. 20006

Joel Stephen Burton, Esq.
O'Melveny & Myers, LLP
555 Thirteenth Street, N.W.
Suite 500 West
Washington, D.C. 20004-1109

Roger W. Fones, Esq.
Antitrust Division
U.S. Department of Justice
325 Seventh Street, N.W.
Washington, D.C. 20530

Nathaniel P. Breed, Jr., Esq.
Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037

Paul M. Ruden, Esq.
Senior Vice President
Legal & Industry Affairs
American Society of Travel Agents
1101 King Street
Alexandria, VA 22314

Carl B. Nelson, Jr., Esq.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 1600
Washington, D.C. 20036

James Parker, Esq.
Vice President & General Counsel
Southwest Airlines, Inc.
P.O. Box 36611
Dallas, TX 75235

Andre Auer
President of ECAC
3 bis. Villa Emile Bergerat
92532 Neuilly-sur-Seine
Cedex, France

Gary Garofalo
Boros & Garofalo, P.C.
1201 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20036

Charles D. Simpson
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006

Megan Rae Rosia
Associate General Counsel
Northwest Airlines, Inc.
901 15th Street, N.W.
Suite 310
Washington, D.C. 20005

Carolyn F. Corwin
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

Elliott M. Seiden
Vice President, Law and Government Affairs
Northwest Airlines, Inc.
901 15th Street, N.W.
Suite 310
Washington, D.C. 20005

Jonathan B. Hill
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802

Douglas L. Abramson
Vice President, General Counsel & Secretary
Worldspan, L.
300 Galleria Parkway
Atlanta, GA 30339

Lauraday Kelly
President
Association of Retail Travel Agents
845 Sir Thomas Court
Suite 3
Harrisburg, PA 17109

Arthur T. Voss
Vice President and General Counsel
Frontier Airlines, Inc.
10215 East 46th Street
Denver, CO 80239

William E. O'Brian, Jr.
Ross, Dixon & Masback, LLP
601 Pennsylvania Avenue, N.W.
North Building
Washington, D.C. 20004

Robert W. Kneisley
Associate General Counsel
Southwest Airlines, Inc.
1250 Eye Street, N.W.
Suite 1110
Washington, D.C. 20005

Joanne W. Young
David M. Kirstein
American West Airlines, Inc.
Baker & Hostetler, LLP
Washington Square, #1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304

Paul C. Jasinski
General Counsel, USA
British Airways PLC
75-20 Astoria Blvd.
Jackson Heights, NY 11370

\\dcnt1\client\999980\3585\5423 srvlist for ost-97-2881.doc